

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Gajendra Singh

Vs. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.1747/2007

DATE OF ORDER

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May 09, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mrs. Nupur Bhati, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to grant him compassionate appointment.

I have heard learned counsel for the petitioner.

It is contended by the learned counsel for the petitioner that father of the petitioner Madan Singh, a Government servant died while in service on 10.12.1994.

The petitioner filed an application seeking compassionate appointment under the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (for short 'the Rules, 1996' hereinafter) vide Annexure-1. Vide Annexure-8, the respondents denied the compassionate appointment to the petitioner on the ground that the petitioner's elder brother Devendra Singh Chouhan is already in Government service and, therefore, in view of Rule 5 of Rules, 1996, the petitioner is not eligible for appointment.

Rule 5 of the Rules, 1996 provides that when a Government servant dies while in service one of his/her dependants may be considered for appointment in Government service subject to the condition that employment under these Rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/daughter of the deceased Government servant is already employed on regular basis under the Central/State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/State Government at the time of death of the Government servant. However, the proviso to this Rule provides that this condition shall not apply where the widow seeks employment for herself.

In the instant case, the widow has not sought the employment. The petitioner, who is son of the Government servant, who died while in service, seeks employment. The petitioner does not fulfill the requirement of Rule 5 of the Rules, 1996 as his elder brother Devendra Singh Chouhan is already in Government service. This fact has not been disputed.

Learned counsel for the petitioner submits that the father of the petitioner died while in service on 10.12.1994 and at that time, the Rules of 1975 were applicable and, therefore, in the Rules, 1975, there was no clause like Rule 5 of the Rules, 1996 and, therefore, the case of the petitioner may be considered under the Rules of 1975. The Rules, 1996 came in force by repelling the existing Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1975 and any order issued thereunder, and thus, the Rules of 1975 has no application.

In the Board of Rajasthan and Anr. vs. Rajendra & 3 others, 2001 (2) WLC (Raj.) 51, the Division Bench of this Court held as under:

"In our opinion, the dependants of the deceased Government servants do not stand to acquire any right of employment

nor does any such accrued to them by mere death of such Government servant and, therefore, they cannot be allowed to invoke Section 6(1)(C) of the Rajasthan General Clauses Act which provides that where any Rajasthan law repeals any enactment thereto made, then unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred any enactment so repealed because in the present case not only a different intention appears in the scheme of Rule 5, 10(3) and 10(6) of the Rules of 1996 when they are compared with Rules of 1975, but also not right of any description was acquired, accrued or incurred by the dependants under the repealed rules. Law is well settled that whenever an Act is repealed it must be considered, except as to transactions passed and closed as if it had never existed. The effect of repeal vide rule 15 in the present case was to obliterate the Rules of 1975 completely from the book and as if it has never been framed and it never existed to the extent of actions which were initiated, taken and concluded while the rules of 1975 were existing. Moreover, existence of corresponding provisions similar to the one contained in repealed provisions is condition precedent to claim that a different intention does not appear in the new rules and, therefore, the rights of the dependants would not stand effected under the new rules. If certain provisions of the new rules are inconsistent and incompatible with the old rules, such rights automatically get obliterated and as a result and effect of the provisions relating to repeal, earlier provisions no longer survive. As to the meaning of right accrued and acquired and as to what effect would be there on the rights where a contrary intention appears in the new set of Rules."

In the instant case, according to the learned counsel for the petitioner, the petitioner filed the application under the Rules, 1996 and thus, petitioner cannot claim compassionate appointment under the Rules of 1975. In the circumstances, therefore, no case for interference is made out.

The writ petition is accordingly dismissed. There shall be no order as to costs.

[H.R.PANWAR],J.

m.asif/-